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Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

DENNIS M. TROHA, JHT HOLDINGS, INC. and ACTIVE TRANSPORTATION COMPANY LLC,

Petitioners,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal courts have subject matter jurisdiction pursuant to "federal common law" under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, over claims against non-signatories to collective bargaining agreements that do not involve "suits for violation of contracts between an employer and a labor organization"?

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

The parties to the proceedings below were petitioners Dennis M. Troha, JHT Holdings, Inc. and Active Transportation Company LLC (as appellees) and respondents Teamsters National Automobile Transporters Industry Negotiating Committee and Teamsters' Local Union No. 745 (as appellants).

Pursuant to Rule 29.6, petitioner JHT Holdings, Inc. states that it has no corporate parent, and that no publicly held company owns 10% or more of JHT Holdings, Inc.'s stock.

Petitioner Active Transportation Company LLC states that its corporate parent company is Active Carhaul LLC and that no publicly held company owns 10% or more of Active Transportation Company LLC.

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The District Court's opinion (per Randa, D.J.) granting petitioners' motion to dismiss respondents' claim is not published. The Court of Appeals' opinion (per Flaum, C.J., joined by Coffey and Kanne, J.J.) reversing the District Court's decision (Pet. App. 1a-11a) is published at 328 F.3d 325. The Court of Appeals' order denying rehearing and rehearing *en banc* (*Id.* at 22a-23a) is not published.

STATEMENT OF JURISDICTION

The Court of Appeals entered judgment on April 29, 2003, and denied rehearing and rehearing *en banc* on May 28, 2003. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Title 28, Section 1331 of the United States Code provides that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States."

STATEMENT OF THE CASE

Respondents Teamsters National Automobile Transporters Industry Negotiating Committee, Teamsters Local Union No. 745 ("Local 745") (collectively "the Teamsters"), petitioner Active Transportation Company LLC ("Active Transportation") and Active USA, Inc. are signatories to a National Master Automobile Transporters Agreement ("NMATA") that also contains a Work Preservation Agreement ("WPA"). Neither Troha nor JHT are signatories to the NMATA or WPA.

On October 12, 2001, Local 745 filed a grievance against Active Transportation under the NMATA and the WPA alleging that Active Transportation transferred work in violation of the collective bargaining agreements (the "Teamsters' grievance"). Specifically, Local 745 claimed that work the Teamsters previously had performed at Active Transportation's Garland, Texas terminal was transferred to a company called Auto Truck Transport Corporation in September 2001, causing the layoff of Teamster employees. Neither Troha nor JHT are parties to the Teamsters' grievance. JHT was the corporate parent of Active Transportation when Local 745 commenced the underlying grievance.

On January 9, 2002, two members of the three-member arbitration panel (the "Board") presiding over the Teamsters' grievance issued a subpoena to Troha and JHT requiring Troha to appear and testify in Dallas, Texas on February 14, 2002 at the arbitration hearing on the Teamsters' grievance. The subpoena also directed Troha and JHT to produce a large number of documents and other materials, including a multitude of records regarding every company in which Troha had an ownership interest, a list of the customers of those companies, as well as

the names, social security numbers and addresses of those companies' employees.

Active Transportation, which, unlike Troha and JHT, is a party to the arbitration proceeding, filed a motion to quash the subpoena. The neutral arbitrator denied Active Transportation's motion to quash without discussion by the Board.

In addition, shortly after Troha and JHT were served with the arbitration subpoena, an attorney for Troha and JHT wrote a letter to the Teamsters' counsel on February 6, 2002 objecting to the subpoena. In the letter, Troha and JHT reiterated that they were not signatories to the collective bargaining agreements. The letter also stated that Troha and JHT would not comply with the subpoena by appearing or producing documents. Troha did not appear at the February 14 and 15, 2002 arbitration hearing in Texas. The Board continued the proceeding until May 21 through 23, 2002 in Kenosha, Wisconsin.

The Teamsters filed this action in the U.S. District Court for the Eastern District of Wisconsin on the afternoon of May 20, 2002—the day before the arbitration proceeding was scheduled to resume—seeking to enforce the subpoena issued to Troha and JHT. The Teamsters alleged that Section 301(a) of the LMRA provided federal subject matter jurisdiction over their claim against Troha and JHT.

The Teamsters did not allege that Troha or JHT violated the collective bargaining agreement. The collective bargaining agreement does not contain any reference whatsoever to Troha or JHT. In addition to filing their complaint, the Teamsters also

moved for a temporary restraining order and a preliminary injunction to be issued against Troha and JHT.

Troha and JHT opposed the Teamsters' motion for an injunction. Troha and JHT also moved to dismiss the Teamsters' claim against them for lack of federal subject matter jurisdiction and for failure to state a claim upon which relief can be granted. In their motion to dismiss, Troha and JHT stated that Section 301(a) of the LMRA did not provide a basis for federal subject matter jurisdiction over the Teamsters' claim against them.

In a July 17, 2002 Decision and Order, the District Court dismissed the Teamsters' action to enforce the arbitration subpoena against Troha and JHT for lack of federal subject matter jurisdiction. (Pet. App. 12a-19a). In its Decision and Order, the District Court held:

> The Teamsters' cause of action is simply "a suit seeking relief in the form of an order compelling the production of documents against a non-signatory." [*Am. Fed's of Television and Radio Artists v.*] *WJBK-TV*[, 164 F.3d 1004, 1013 (6th Cir. 1999)]. While the Teamsters' claim refers to Section 301(a), "federal question jurisdiction does not rest merely on some obscure relationship between the cause of action and a federal law." *Fornalik v. Perryman*, 223 F.3d 523, 531 (7th Cir. 2000). Put simply, the Teamsters' claim does not "arise under" the LMRA merely because the underlying labor dispute does.
>
> The Court is mindful of the "federal policy that federal courts should enforce [collective bargaining] agreements on behalf of or against

labor organizations." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 455 (1957). In *Lincoln Mills*, the Supreme Court held that the "substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456. However, as established in the preceding paragraph, the Court is not presented with a claim which seeks to enforce a collective bargaining agreement. Thus, there is no danger that forcing the Teamsters to resort to state court will result in "inconsistent state court interpretations of collective bargaining agreements." [*International Union, United Mine Workers v.*]*Covenant Coal*, 977 F.2d [895, 897 (4th Cir. 1992)]. The "uniformity" argument, in any event, "puts the cart before the horse." *Id.* at 898. "[G]eneralized notions of the benefits of uniform federal interpretation of labor contracts [will not] override the explicit statutory language of section 301 that limits federal jurisdiction to 'suits for violation of [labor] contracts.'" *Id.* Ultimately, the Court's concerns about "national labor policy" must yield to its duty to police its jurisdictional border. *See Victory Carriers, Inc. v. Law*, 404 U.S. 202, 212, *reh'g denied*, 404 U.S. 1064 (1971) ("Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined," quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)).

(Pet. App. 17a-18a) (footnotes omitted).

On April 29, 2003, the Seventh Circuit Court of Appeals issued a decision reversing the District Court's dismissal of the Teamsters' claim against Troha and JHT. (Pet. App. 1a-11a). In its Decision, the Seventh Circuit concluded that Section 301 of the LMRA did not provide a basis for federal jurisdiction over the Teamsters' claim against Troha and JHT. (Pet. App. 7a). The Seventh Circuit held:

> We can dispense with the claim that jurisdiction exists under § 301 quickly. The § 301 grant of jurisdiction is extremely limited. The Supreme Court's holding in *Textron* emphasizes this narrowness. . . . The holding of *Textron* is that only cases that allege violations of the collective bargaining agreement fall under the jurisdictional grant of § 301. Since only parties to a contract can violate it, a plaintiff cannot possibly allege that a non-party violated a collective bargaining agreement; therefore, the plaintiff cannot assert jurisdiction under § 301 to bring a federal action against the non-party.

(*Id.* at 6a-7a) (footnotes omitted).

Although it concluded that Section 301 of the LMRA did not provide a basis for federal subject matter jurisdiction over the Teamsters' claim against Troha and JHT, the Seventh Circuit nevertheless concluded that it was authorized to use "federal common law" under Section 301 to exercise such jurisdiction over the Teamsters' claim against Troha and JHT. (Pet. App. 8a-11a).

REASONS FOR GRANTING THE PETITION

This Court should grant the writ because this petition presents an issue of federal subject matter jurisdiction on which the Seventh Circuit's Decision is inconsistent with the relevant holdings of this Court. The issue of federal question jurisdiction raised in this petition is important. This Court has previously indicated that the scope of federal authority under Section 301 is an important issue. *See Textile Workers Union of Am. v. Lincoln Mills*, 353 U.S. 448, 449 (1957).

Moreover, the Seventh Circuit's Decision is inconsistent with this Court's holdings that federal courts are courts of limited jurisdiction that possess subject matter jurisdiction only to the extent authorized by the Constitution or by statute. *See, e.g., Kokkonnen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (citations omitted); *see also Willy v. Coastal Corp.*, 503 U.S. 131, 136-137 (1992); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986).

Here, the Seventh Circuit acknowledged that the scope of federal subject matter jurisdiction under Section 301(a) of the LMRA is expressly limited to suits for violation of contracts between an employer and a labor organization. (Pet. App. 6a). Nevertheless, the Seventh Circuit used Section 301 as a basis to create "federal common law" jurisdiction over the Teamsters' claim against Troha and JHT. (Pet. App. 11a).

The Seventh Circuit's expansion of federal subject matter jurisdiction under Section 301 of the LMRA is inconsistent with the express language of Section 301 and this Court's holding in *Textron Lycoming Reciprocating Engine Div., Avco*

Corp. v. UAW, 523 U.S. 653, 657-58 (1998) that federal subject matter jurisdiction under Section 301 is limited to claims involving "suits for violation of contracts." The Seventh Circuit's Decision represents an unprecedented expansion of federal subject matter jurisdiction under Section 301 of the LMRA beyond the scope authorized by Congress as interpreted by this Court.

The Seventh Circuit's Decision is also inconsistent with this Court's decision in *Lincoln Mills*. In *Lincoln Mills*, this Court stated that Section 301 of the LMRA authorized federal courts to use federal common law to create *remedies* that are consistent with the purposes of Section 301. 353 U.S. at 457. This Court did not suggest that federal courts were authorized to use federal common law under Section 301 to create federal subject matter jurisdiction over claims that are expressly excluded from the scope of jurisdiction under the statute.

As a result of the Seventh Circuit's Decision, federal courts will become responsible for the supervision of arbitration proceedings. They will be burdened with jurisdiction over an array of lawsuits that are only tangentially related to arbitration proceedings over which Congress never intended to authorize, and did not authorize, federal subject matter jurisdiction.

This Court should review the Seventh Circuit's Decision to resolve the important issue of federal question jurisdiction raised in this petition on which the Seventh Circuit's Decision is inconsistent with relevant decisions of this Court.

I. THE SCOPE OF FEDERAL SUBJECT MATTER JURISDICTION OVER CLAIMS AGAINST NON-SIGNATORIES TO COLLECTIVE BARGAINING AGREEMENTS IS AN IMPORTANT ISSUE.

This Court previously indicated that the scope of federal judicial authority under Section 301(a) of the LMRA is an important issue. *See Lincoln Mills*, 353 U.S. at 449. The Seventh Circuit's Decision represents an unprecedented and unauthorized expansion of federal subject matter jurisdiction.

This expansion of federal jurisdiction will increase the case loads of federal courts. As a result of the Seventh Circuit's Decision, federal courts will become "appellate courts" for arbitration proceedings related to collective bargaining agreements. Federal courts will be responsible not only for deciding whether to vacate or enforce arbitration awards arising out of collective bargaining agreements, they will also be responsible for regulating discovery disputes and potentially other issues related to third parties to such arbitration proceedings. State courts are capable of addressing these issues. Indeed, states have enacted statutes specifically enabling state courts to do so.

Congress did not authorize under Section 301 the expansive scope of federal subject matter jurisdiction established by the Seventh Circuit Decision. The Court should grant the petitioners' writ and resolve this important issue.

II. THE SEVENTH CIRCUIT'S DECISION IS INCONSISTENT WITH RELEVANT DECISIONS OF THIS COURT HOLDING THAT FEDERAL COURTS POSSESS JURISDICTION ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION OR STATUTE AND INTERPRETING SECTION 301 OF THE LMRA TO LIMIT FEDERAL SUBJECT MATTER JURISDICTION UNDER THAT STATUTE TO SUITS FOR VIOLATIONS OF COLLECTIVE BARGAINING AGREEMENTS.

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Kokkonnen*, 511 U.S. at 377 (citations omitted) (*see also* Seventh Circuit Decision, Pet. App. 4a) ("Federal courts are courts of limited jurisdiction and may only exercise jurisdiction where it is specifically authorized by federal statute.") The party seeking a federal forum bears the burden of showing that federal jurisdiction exists. *See Kokkonnen*, 511 U.S. at 377 (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182-183 (1936)).

Here, the Teamsters asserted that the District Court had federal subject matter jurisdiction over their claim under Section 301 of the LMRA.[1] The Seventh Circuit held that

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1. The Teamsters' complaint and their jurisdictional statement on appeal each contained a single reference to 28 U.S.C. Section 1331. However, the Teamsters never asserted, either in the District Court or on appeal to the Seventh Circuit, that Section 1331 provided an independent basis for federal jurisdiction over their claim. Instead, the Teamsters consistently argued that they were asserting jurisdiction under Section 301 of the LMRA. Moreover, in order for a federal (Cont'd)

Section 301 of the LMRA does not provide federal subject matter jurisdiction over the Teamsters' claim against Troha and JHT because jurisdiction under Section 301 is limited to "suits for violation of contracts." (Pet. App. 6a).

Nevertheless, the Seventh Circuit concluded that there is federal subject matter jurisdiction over the Teamsters' claim under 28 U.S.C. § 1331 because it is "appropriate to apply the reach of federal common law" under Section 301 to create jurisdiction over such claims. (Pet. App. 9a). In reaching this conclusion, the Seventh Circuit misapplied the applicable law and extended the scope of "federal common law" beyond the boundaries authorized by statute as interpreted by prior decisions of this Court.

(Cont'd)
court to have subject matter jurisdiction or a claim under Section 1331 the claim must "arise under" some other federal statute. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 808-09 (1986).

Here, the Seventh Circuit acknowledged that the Teamsters' claim against Troha and JHT did not arise under federal law. The Decision does not identify any federal statute as the basis for federal subject matter jurisdiction other than Section 301 of the LMRA. However, the Seventh Circuit held that Section 301 of the LMRA *does not* authorize federal jurisdiction over the Teamsters' claim against Troha and JHT. Moreover, as discussed in this petition, there is no basis for the creation of "federal common law" under Section 301 over the Teamsters' claim against Troha and JHT. Consequently, contrary to the Seventh Circuit's holding, the Teamsters' claim against Troha and JHT cannot "arise under" Section 301 of the LMRA. Therefore, there is no basis for federal subject matter jurisdiction over the Teamsters' claim under Section 1331.

A. Section 301 Of The LMRA Does Not Authorize Federal Courts To Use Federal Common Law To Expand The Scope Of Federal Subject Matter Jurisdiction Under The Statute.

Section 1331 provides federal subject matter jurisdiction over claims founded upon federal common law. *See Illinois v. City of Milwaukee*, 406 U.S. 91, 101 (1972). However, the authority to formulate federal common law is limited and essentially falls into two categories: (1) those in which a federal rule of decision is necessary to protect uniquely federal interests; and (2) those in which Congress has given the federal courts the power to develop substantive law. *See Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981).

Here, the Seventh Circuit relied on the second category in which federal courts are authorized to create federal common law. Citing this Court's decision in *Textile Workers Union of Am. v. Lincoln Mills*, 353 U.S. 448 (1957), the Seventh Circuit stated that Section 301 of the LMRA "authorizes the federal courts to fashion a body of common law for the enforcement of the collective bargaining agreements over which they have jurisdiction." (Pet. App. 8a).

The Seventh Circuit noted that the "authorization to create federal law under § 301" is limited to disputes between signatories to the collective bargaining agreement. Nevertheless, it stated that "*Lincoln Mills* envisions the creation of federal common law to enforce arbitration subpoenas" issued to non-signatories to collective bargaining agreements. (Pet. App. 9a). Neither Section 301 of the LMRA nor this Court's interpretation of the scope of that statute in

Lincoln Mills authorize the creation of federal common law to expand federal subject matter jurisdiction to claims that are expressly excluded from the reach of jurisdiction under Section 301.

Section 301 of the LMRA does not support the Seventh Circuit's exercise of subject matter jurisdiction in this case because the statute does not permit a federal court to exercise jurisdiction over claims against non-signatories to collective bargaining agreements. Federal subject matter jurisdiction under Section 301 instead is limited to "[s]uits for violation of contracts between an employer and a labor organization." *See* 29 U.S.C. § 185(a); *Textron*, 523 U.S. at 657-58. Therefore, claims against non-signatories to collective bargaining agreements fall outside the jurisdictional limits that Congress established in Section 301. *Id.*

The Seventh Circuit's Decision is based on the flawed and contradictory assumption that Congress authorized federal courts to do indirectly that which Congress expressly prohibited federal courts from doing directly. *See, e.g.*, *Bailey v. Alabama*, 219 U.S. 219, 244 (1911) (stating that a State cannot do indirectly that which it cannot do directly). The Seventh Circuit acknowledged that Congress did *not* authorize federal subject matter jurisdiction over claims against non-signatories to collective bargaining agreements directly under Section 301 of the LMRA (and expressly excluded such claims from the scope of Section 301). (Pet. App. 6a-7a).

Nevertheless, the Seventh Circuit concluded that it could indirectly create federal subject matter jurisdiction over such claims under Section 301 of the LMRA based on its creation of "federal common law." (Pet. App. 11a). Rather than

effectuating the goals of Section 301, the Seventh Circuit Decision disregards the Congressional intent underlying Section 301 by ignoring the express limitations of the statute and expanding the scope of federal court jurisdiction under the statute beyond the limits that Congress expressly prescribed.

B. The Seventh Circuit's Decision Is Also Inconsistent With This Court's Decision In *Lincoln Mills*.

Lincoln Mills involved a claim between two parties to a collective bargaining agreement. One party was seeking to compel the other party to submit to arbitration pursuant to the terms of the collective bargaining agreement between the parties—a *remedy* that was not expressly authorized under Section 301. 353 U.S. at 449. There was no dispute in *Lincoln Mills* that the federal court had subject matter jurisdiction over the claim under Section 301—it was a claim between signatories to the collective bargaining agreement. *Id.*

In *Lincoln Mills*, this Court said that the legislative history of Section 301 suggests that Congress intended the statute to permit federal courts to create federal common law in certain situations to effectuate the purposes of the statute. 353 U.S. at 455-57. The Court noted that "[t]he Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations." *Id.* at 457. Consequently, the Court concluded that it could use federal common law to provide the *remedy* the *Lincoln Mills* plaintiffs were seeking.

Nowhere did this Court in *Lincoln Mills* authorize federal courts to disregard the express jurisdictional limitations of

could use federal common law under Section 301 to create federal subject matter jurisdiction over claims where Congress did not authorize such jurisdiction. Nevertheless, that is what the Seventh Circuit's Decision has done.[2]

C. Congress's Enactment Of Other Statutes Specifically Authorizing Enforcement Of Subpoenas In Federal Court Shows That Congress Did Not Intend Section 301 To Authorize Federal Courts To Enforce Subpoenas Against Non-Signatories To Collective Bargaining Agreements.

The Seventh Circuit's reliance on Section 7 of the Federal Arbitration Act (the "FAA") as support for its unprecedented expansion of federal subject matter jurisdiction is also misplaced. In fact, the FAA shows that Congress did not intend to provide jurisdiction over subpoena enforcement actions against non-signatories to collective bargaining agreements under Section 301 of the LMRA.

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2. The Seventh Circuit used federal common law to create jurisdiction over the Teamsters' claim based on its flawed assumption that the Teamsters would be left without a remedy if the Teamsters could not seek to enforce the subpoena in federal court. (Pet. App. 9a). The Seventh Circuit's Decision ignores the fact that the Teamsters ***do*** have a potential remedy even though Section 301(a) of the LMRA does not provide a basis for federal subject matter jurisdiction over their claim against Troha and JHT. The Teamsters are free to seek to enforce the arbitration subpoena in ***state*** court pursuant to ***state*** law. The Teamsters have a potential remedy under Wisconsin law which expressly permits parties to seek enforcement of arbitration subpoenas in state court. *See* Wis. Stat. § 788.06.

Section 7 of the FAA expressly authorizes the enforcement in federal court of subpoenas issued in arbitration proceedings covered by the Act.[3] *See* 9 U.S.C. § 7. Section 7 of the FAA demonstrates that Congress knows how to provide federal subject matter jurisdiction over subpoena enforcement actions against non-signatories to arbitration agreements when it wants to do so: it creates an express statutory method for enforcing such subpoenas in federal court.

Likewise, when Congress intended to permit federal courts to enforce arbitration subpoenas under the National Labor Relations Act ("NLRA"), it enacted a statute that provides authorization for federal courts to do so. Specifically, Congress created a statute under the NLRA that allows district courts to issue orders to "any person" refusing to obey a subpoena issued by the National Labor Relations Board, punishable by contempt of court. *See* 29 U.S.C. § 161.

Section 301 of the LMRA does not contain a provision similar to Section 7 of the FAA or Section 161 of the NLRA. Because Congress limited jurisdiction under Section 301 to "suits for violation of collective bargaining agreements," Congress did not authorize federal subject matter jurisdiction under Section 301 over claims to enforce arbitration subpoenas issued to third parties.

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3. The Seventh Circuit acknowledged that the FAA did not provide federal subject matter jurisdiction over the Teamsters' claim against Troha and JHT. (Pet. App. 10a).

* * *

The Seventh Circuit's Decision is inconsistent with relevant decisions of this Court that have limited federal subject matter jurisdiction to those claims which federal courts are authorized to address by the Constitution or by statute. Moreover, the Seventh Circuit's Decision is inconsistent with this Court's holding in *Lincoln Mills* that federal courts can create federal common law to provide *remedies* not expressly set forth in Section 301 of the LMRA.

Here, as the District Court held, Section 301 does not provide authorization for federal subject matter jurisdiction over the Teamsters' claim against JHT and Troha. This Court should review the Seventh Circuit's Decision in order address the important issue of federal jurisdiction raised in this petition.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED APRIL 29, 2003

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 02-3103

TEAMSTERS NATIONAL AUTOMOTIVE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, a labor organization, and TEAMSTERS LOCAL UNION 745,

Plaintiffs-Appellants,

v.

DENNIS M. TROHA, Chairman and CEO of JHT Holdings, Incorporated, JHT HOLDINGS, INCORPORATED, a Delaware corporation, and ACTIVE TRANSPORTATION COMPANY, a Kentucky limited liability company,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 02 C 504—**Rudolph T. Randa**, *Chief Judge.*

ARGUED FEBRUARY 19, 2003—DECIDED APRIL 29, 2003

Before FLAUM, *Chief Judge*, and COFFEY and KANNE, *Circuit Judges.*

Appendix A

FLAUM, *Chief Judge*. The Teamsters Automobile Transporters Industry National Negotiating Committee and Teamsters Local Union 745 (collectively "the Teamsters") brought an action to enforce an arbitration subpoena against JHT Holdings, Inc. ("JHT"), and its Chairman and CEO, Dennis Troha,[1] neither of whom are signatories to the collective bargaining agreement that forms the basis of the underlying arbitration. The district court, concluding that it lacked subject matter jurisdiction, dismissed the action, and the Teamsters appeal. We are presented with the question of whether a federal cause of action exists to enforce an arbitration subpoena against parties who were not signatories to the collective bargaining agreement that forms the basis for the arbitration. Because we find that a cause of action to enforce the subpoena does exist under federal common law, the district court had federal question jurisdiction over this suit. We therefore reverse the judgment of the district court.

---

1. Active Transportation Company, a signatory of the bargaining agreement, was also named as a defendant. At this point the dispute is whether the court has jurisdiction to enforce a subpoena against the non-signatories, and Active Transportation Company's role in this legal dispute is minimal and their brief generally adopts the arguments of Mr. Troha and JHT. Furthermore, it is not clear that Active Transportation Company is even a proper defendant. The Teamsters seek enforcement against Mr. Troha and JHT, and it is not apparent how the district court could have ordered relief from Active Transportation Company that could have redressed the Teamsters alleged injury. *Accord Am. Fed'n of Television and Radio Artists v. WJBK-TV*, 164 F.3d 1004, 1013 n.6 (6th Cir. 1999) (Clay, J., dissenting) (questioning standing to bring this type of suit against the signatory when relief is only sought from the third-parties named in the subpoena).

Appendix A

I. Background

Active Transportation Company and its subsidiary Active USA, Inc. (collectively "Active") operate a terminal in Garland, Texas. The Teamsters are the bargaining representatives for certain employees at Active's Garland terminal. The Teamsters and Active are signatories to the National Master Automobile Transporters Agreement and the Work Preservation Agreement (collectively "the bargaining agreements"). The Teamsters allege that on September 29, 2001, Active breached these bargaining agreements. The breach allegedly occurred when Active transferred work, previously performed at the terminal in Garland, to Auto Truck Transport Corporation ("Auto Truck"). According to the Teamsters this was an unauthorized transfer prohibited by the bargaining agreements. Pursuant to the rules set forth in the agreements, the Teamsters filed a grievance with a three-member Board of Arbitration.

The grievance, as would be expected, was filed against Active, the signatory of the bargaining agreements. But there are other parties involved. It seems that Active and Auto Truck are more than just business partners. In fact they share the same majority owner, Mr. Troha. Mr. Troha is also the Chairmen and CEO of JHT, which the Teamsters claim is a controlled affiliate of both Auto Truck and Active. Recognizing the involvement of these parties and seeking to resolve this dispute, the arbitration board issued a subpoena to Mr. Troha and JHT directing Mr. Troha to appear and testify as well as directing both Mr. Troha and JHT to produce numerous documents. Neither Mr. Troha nor JHT complied with the subpoena. On May 20, 2002, the Teamsters brought this action to enforce the subpoena. The district court concluded that it lacked subject matter

jurisdiction because Mr. Troha and JHT were non-signatories to the underlying bargaining agreement. The district court dismissed the action, and the Teamsters appeal that ruling.

II. Discussion

Federal courts are courts of limited jurisdiction and may only exercise jurisdiction where it is specifically authorized by federal statute. Recognizing this principle, the Teamsters turn to § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, in an attempt to establish the authority for federal subject matter jurisdiction.[2] Still it is not clear from the briefs whether the Teamsters are attempting to establish jurisdiction directly under § 301(a) of the Labor-Management Relations Act, which provides that

> [s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties,

or indirectly under 28 U.S.C. § 1331, which provides that

> [t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States,

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2. The Teamsters do not attempt to establish diversity jurisdiction under 28 U.S.C. § 1332.

or under both.[3] This ambiguity is somewhat excusable given the fact that specific statutory grants of jurisdiction over federal causes of action are often largely superfluous given that the grant under § 1331 includes all civil actions where a federal law creates a federal cause of action. *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust For Southern Cal.*, 463 U.S. 1, 8-9, (1983). Still, the provisions are nonetheless distinct sources under which a party may seek to establish subject matter jurisdiction. *See, e.g., Textron Lycoming Reciprocating Engine Div., Avco Corp. v. UAW*, 523 U.S. 653, 655 n.1 (1998) (holding that plaintiff was limited to arguing for jurisdiction under § 301 because Petition for Certiorari contained no reference to 28 U.S.C. § 1331). The distinction can be especially relevant where a party asserts jurisdiction under § 301 and not under § 1331. Specific jurisdictional provisions like § 301 are grants of jurisdiction over cases where the plaintiff is pressing a particular federal cause of action—in the § 301 context, causes of action brought "for violation of contracts between an employer and a labor organization." § 1331 jurisdiction, on the other hand, includes most causes of action, state or federal, where the plaintiff's right to relief necessarily depends on the resolution of a substantial federal question. *Franchise Tax Bd.*, 463 U.S. at 27-28.[4] Seeking to establish jurisdiction under § 301 alone and

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3. The jurisdictional statement in the Teamsters' opening brief cites § 1331, however this is the only reference in the entire brief to that statute and the statute does not appear anywhere in their reply brief. Reference to § 1331 was equally sparse during oral arguments.

4. This statement "must be read with caution" as federal courts do not have jurisdiction over every single case that turns on the resolution of a federal question. *See Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 809 (1986).

not under § 1331 may therefore limit a party to arguing that they are bringing a suit for violation of a collective bargaining agreement. For example, in *Textron* the Supreme Court rejected plaintiff's argument that "what would suffice to sustain a declaratory judgment action premised on § 1331 federal-question jurisdiction would suffice to sustain a declaratory judgment action brought under § 301(a)" because "the language of the two provisions is quite different." 523 U.S. at 660. The Court explained: "Whereas § 1331 authorizes 'civil actions arising under the . . . laws . . . of the United States' . . . § 301 authorizes only 'suits for violations of contracts.'" *Id.* All this being said, because of the inherent overlap in the provisions, we will construe the Teamsters' brief as asserting jurisdiction under both provisions.

We can dispense with the claim that jurisdiction exists under § 301 quickly. The § 301 grant of jurisdiction is extremely limited. The Supreme Court's holding in *Textron* emphasizes this narrowness. The plaintiffs in that suit sought a declaration that a contract was invalid. Relying on the specific statutory language of § 301, the *Textron* Court explained, "By its terms, this provision confers federal subject-matter jurisdiction only over 'suits for violations of contracts.'" *Id.* at 656. The Court reasoned that the phrase "for violations of contracts" encompassed only suits "filed *because a contract has been violated*" and therefore did not include "suits that claim a contract is invalid." *Id.* at 657. The Court concluded that "[b]ecause the Union's complaint alleges no violation of the collective bargaining agreement, neither we nor the federal courts below have subject-matter jurisdiction over this case under § 301(a) of the Labor-Management Relations Act." *Id.* at 661. The holding of *Textron* is that only cases that allege violations of the collective bargaining agreement fall under the jurisdictional grant of § 301. Since only parties to

a contract can violate it, a plaintiff cannot possibly allege that a non-party violated a collective bargaining agreement; therefore, the plaintiff cannot assert jurisdiction under § 301 to bring a federal action against the non-party.[5]

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5. Cases prior to *Textron* have read the § 301 grant more broadly, asserting that any suit that requires an interpretation of the collective bargaining agreement is *de facto* a suit "for violation" of the agreement. *See, e.g., Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1180 (7th Cir. 1993) ("The rule seems to be that if the plaintiff's claim, ostensibly based on state law, cannot be adjudicated without interpretation of the collective bargaining agreement, the claim turns into a federal claim that the agreement itself has been violated."); *In re Amoco Petroleum Additives Co.*, 964 F.2d 706, 709 (7th Cir. 1992) ("[T]he Supreme Court treats any attempt to interpret, enforce, or question a collective bargaining agreement as necessarily based on national law."); *see also Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-06 (1988) (holding that where interpretation of the agreement is required, state-law is pre-empted). But even under that analysis an action to enforce an arbitration subpoena still does not fall under the § 301 grant of jurisdiction. Mr. Troha and JHT's duty to provide information or testimony to the arbitration board that is trying to determine whether Active breached a collective bargaining agreement cannot logically be dependent upon a determination of whether Active actually did breach the agreement. If such a determination were necessary, the result would be absurd. The Teamsters would have to prove that Active breached the agreement in order to subpoena information from JHT and Mr. Troha. But the only reason the Teamsters want the information from JHT and Troha is to prove that Active breached the agreement. *See Lingle*, 486 U.S. at 406 ("[A]s long as the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 pre-emption purposes.").

Appendix A

The question of § 1331 jurisdiction is more challenging. The first question for us to address is whether the plaintiffs are asserting a federal cause of action. If the plaintiffs are asserting such a cause of action then § 1331 plainly creates jurisdiction because the suit would arise under federal law. This question is complicated because the Supreme Court has determined that § 301, beyond expressly authorizing the federal courts to hear suits brought for violations of collective bargaining agreements, also authorizes the federal courts to fashion a body of common law for the enforcement of the collective bargaining agreements over which they have jurisdiction. *Textile Workers Union of Am. v. Lincoln Mills*, 353 U.S. 448 (1957). In general we have viewed this authorization to create federal law under § 301 as limited to disputes between signatories of the collective bargaining agreement. *See Loss v. Blankenship*, 673 F.2d 942, 958 (7th Cir. 1982) ("We hold, therefore, that a complaint for interference with a collective bargaining agreement, against a non-party to that agreement, is not actionable under § 301(a) of the LMRA."), and at 946 ("'§ 301 suits are confined to defendants who are signatories of the collective bargaining agreement under which they are brought.'") (quoting *Ramsey v. Signal Delivery Serv., Inc.*, 631 F.2d 1210 (5th Cir. 1980)). But this rule is not absolute. Indeed, the limitation is more aptly described not in terms of parties but in terms of the purpose of a lawsuit. *See, e.g., Wooddell v. Intern'l Bhd. of Elec. Workers*, 502 U.S. 93 (1991); *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). When the purpose of the lawsuit effectuates the goals of § 301, then it is appropriate for federal common law to embrace such suits. The Court in *Lincoln Mills* explained the reason for authorizing the creation of federal common law in this area:

> [T]he legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses

> a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained in only that way.
>
> . . . And when the House debate narrowed to the question of whether § 301 was more than jurisdictional, it became abundantly clear that the purpose of the section was to provide the necessary legal remedies.

Lincoln Mills, 353 U.S. at 455. With enforcement of these agreements and the provision of necessary legal remedies as our guides it becomes clear that *Lincoln Mills* envisions the creation of federal common law to enforce arbitration subpoenas. A collective bargaining agreement that requires arbitration is powerless if the parties to the arbitration cannot present evidence in the form of third person testimony or documents possessed by third parties. Enforcement of an agreement to arbitrate cannot provide the "necessary legal remedy" if the parties to the arbitration have no means of securing valuable evidence other than their own testimony.

Viewed in this light, today's case is distinguishable from *Loss*. We held that the plaintiff in *Loss* failed to state a federal claim not because the defendant was a third party, but because the tortious interference suit was not necessary to the purpose of enforcing the collective bargaining agreement between the signatories. Suits for enforcement of an arbitration subpoena, on the other hand, have a great impact on the arbitration process and are necessary to the purpose of enforcing the agreement to arbitrate. It is therefore appropriate to apply the reach of federal common law to ensure that such subpoenas do not go unenforced.

This conclusion finds support in § 7 of the Federal Arbitration Act (FAA), 9 U.S.C. § 7. Although the FAA does not apply in this case, the reasoning behind the act is instructive in fashioning federal common law. § 7 provides that in an arbitration covered by the FAA an arbitrator may issue a subpoena, and

> if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

Id. The same principles underlying the Congressional decision to create an enforcement mechanism for arbitration subpoenas under the FAA apply to the arbitrations pursuant to collective bargaining agreements even when those arbitrations do not fall under the application of the FAA. *See United Paperworkers Intern'l Union v. Misco, Inc.*, 484 U.S. 29, 40 n.9 (1987) ("Federal courts have often looked to the Act for guidance in labor arbitration cases, especially in the wake of the holding that § 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. § 185, empowers the federal courts to fashion rules of federal common law."); *see also American Fed'n of Television and Radio Artists v. WJBK-TV*, 164 F.3d 1004, 1009 (6th Cir. 1999) (applying the reasoning of the FAA in holding that an arbitration subpoena could be enforced in federal court without deciding whether the FAA itself applied to the case before it).

We therefore hold that federal common law under § 301 creates a cause of action by which a party to a collective bargaining agreement that is otherwise covered by § 301 can enforce an arbitration subpoena against a non-signatory of the agreement. In turn, because the cause of action arises under federal common law, the district court had jurisdiction over the action under 28 U.S.C. § 1331.

III. Conclusion

For the reasons stated above the district court's dismissal of this case is REVERSED and the case is REMANDED for further proceedings consistent with this opinion.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B — DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN DATED AND FILED JULY 17, 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 02-CV-504

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, et al.,

Plaintiffs,

-vs-

DENNIS M. TROHA, JHT HOLDINGS, Inc., and ACTIVE TRANSPORTATION, Inc.,

Defendants.

DECISION AND ORDER

The issue presented by this action is whether the Court has subject matter jurisdiction under Section 301(a) of the Labor Management Relations Act ("LMRA") to enforce an arbitration subpoena against non-signatories to the underlying collective bargaining agreement. The Court concludes that it lacks jurisdiction to enforce the subpoena, and accordingly, the case is dismissed.

Appendix B

The Dispute

The plaintiffs, Teamsters Automobile Transporters Industry National Negotiating Committee and Teamsters Local No. 745 (the "Teamsters"), are currently involved in a labor dispute with defendant Active Transportation, Inc. and its subsidiary, Active USA (collectively referred to as "Active Transportation"). Active Transportation is in the business of delivering trucks for international truck manufacturers.

Active Transportation and the plaintiffs are signatories to the National Master Automobile Transporters Agreement ("NMATA") as well as the Work Preservation Agreement ("WPA"). The WPA provides that "Parent [Active Transportation] and Employer [Active USA] agree that neither Parent nor Employer shall undertake to, or permit any Controlled Affiliate . . . to subcontract, transfer, lease, divert, contract, assign, convey, in full or in part, any Carhaul Work to any Controlled Affiliate, plant, business, person, or non-unit employees other than Employer or to any other mode or operation, except as explicitly and specifically provided in the NMATA and/or supplemental agreements." Complaint, Exhibit A (WPA, ¶ 2).[1] The WPA further provides that "all grievances or disputes concerning the interpretation or application of this Agreement shall be resolved in final and binding arbitration before the Board of Arbitration established in Article 33, Section 3 of the NMATA and pursuant to the procedure described [therein]." WPA, ¶ 7.

---

1. Article 33 of the NMATA contains a nearly identical provision.

Appendix B

On September 29, 2001, work being performed at Active Transportation's Garland, Texas terminal was allegedly transferred to Auto Truck Transport Corporation ("Auto Truck"), a "controlled affiliate" of defendant JHT Holdings, Inc. ("JHT"), after the work was put out for competitive bid. Defendant Dennis Troha ("Troha"), JHT's Chairman and CEO, is the majority owner of Auto Truck and Active Transportation. On October 12, 2001, the Teamsters[2] filed a grievance with the Board of Arbitration alleging that this transfer of work violated the WPA. On January 9, 2002, the Board of Arbitration issued a subpoena requiring Troha to appear personally and testify in Dallas, Texas on February 14, 2002 at a hearing regarding the Teamsters' grievance. The subpoena also directed Troha to produce a large number of documents.[3] According to the Teamsters, "Troha has been shown to control the labor relations policies of the signatory Employer Active Transportation Company, by way of a written directive dated August 17, 2002 to Active Transportation manager Bruce Jackson." *See* Reply, p. 2 (citing Union Exhibit 7). Troha failed to appear, and the hearing was continued until May 21-23, 2002, in Kenosha, Wisconsin. On May 20, 2002, the Teamsters brought the present action to enforce their subpoena, and the Court ordered briefing on the jurisdictional issue it now considers.

Jurisdiction

The Teamsters have not attempted to invoke the Court's diversity jurisdiction, apparently because it would be difficult to meet the amount in controversy requirement. *See* 28 U.S.C.

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2. Local 745 filed the grievance; the National Teamsters Negotiating Committee became involved later in the proceedings.

3. *See* Complaint, Exhibit B.

§ 1332 (Diversity of citizenship). The Teamsters are therefore left to proceed under 28 U.S.C. § 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." "It is standard learning that federal question jurisdiction arises only when the complaint standing alone 'establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.' " *Minor v. Prudential Securities, Inc.*, 94 F.3d 1103, 1105 (7th Cir. 1996) (citing *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

The Teamsters attempt to state a federal claim under Section 301 (a) of the Labor Management Relations Act ("LMRA"), which provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). It is undisputed that JHT and Troha are *not* signatories to the NMATA or the WPA. Accordingly, the most simple, straightforward conclusion is that the Court lacks jurisdiction because Section 301(a) only provides a cause of action for the *violation of contracts* between an employer and a labor organization. JHT and Troha obviously cannot violate a contract to which they are not a party. *See Int'l Union, United*

Mine Workers of America v. Covenant Coal Corp., 977 F.2d 895, 897 (4th Cir. 1992) ("Applying the most natural interpretation of this language, we find that a suit against a non-signatory of a contract cannot be considered a suit for violation of the contract"); *see also Loss v. Blankenship*, 673 F.2d 942, 946 (7th Cir. 1982) (Section 301(a) "does not provide the basis for an LMRA claim against a nonparty to the underlying collective bargaining agreement") and *Baker v. Fleet Maintenance, Inc.*, 409 F.2d 551, 554 (7th Cir. 1969) ("this section 301 suit failed to state a claim against Sears . . . [because] Sears was not a party to the collective bargaining agreement which was the basis of the plaintiff's claim").[4] The Supreme Court has acknowledged this distinction: "a suit 'for violation of a contract' . . . is one filed *because a contract has been violated*. . . . [this provision] erects a gateway through which parties may pass into federal court." *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. UAW*, 523 U.S. 653, 657-58 (1998) (emphasis in original).

There is, however, strong support for a contrary conclusion. The Sixth Circuit recently held, over a vigorous dissent, that the court had subject matter jurisdiction under Section 301 of the LMRA to enforce an arbitration subpoena against a third party to the underlying collective bargaining agreement. *Am. Fed'n of Television and Radio Artists v. WJBK-TV*, 164 F.3d 1004, 1009 (6th Cir. 1999). Writing for the majority, Judge Guy observed that "the issue in thus case is not whether A & M can be forced to arbitrate a dispute, but whether, as a non-party, it can be compelled to produce documents in the arbitration

4. While signatory Active Transportation is a named defendant in this action, the only relief sought by the plaintiffs is enforcement of the subpoena against JHT and Troha.

between Pierce and WJBK." *WJBK-TV* at 1008. In his dissent, Judge Clay disagreed with this characterization: "Indeed, the question of subject matter jurisdiction does not involve the merits of whether A & M must in fact produce documents. Rather, the issue of subject matter jurisdiction concerns only whether federal courts, as opposed to state courts, may require A & M to comply with the subpoena." *Id.* at 1013, n. 4. The Court agrees with the latter characterization. The Teamsters' cause of action is simply "a suit seeking relief in the form of an order compelling the production of documents against a non-signatory." *WJBK-TV* at 1013. While the Teamsters' claim refers to Section 301(a), "federal question jurisdiction does not rest merely on some obscure relationship between the cause of action and a federal law." *Fornalik v. Perryman*, 223 F.3d 523, 531 (7th Cir. 2000). Put simply, the Teamsters' claim does not "arise under" the LMRA merely because the underlying labor dispute does.[5]

The Court is mindful of the "federal policy that federal courts should enforce [collective bargaining] agreements on behalf of or against labor organizations." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 455 (1957). In *Lincoln Mills*, the Supreme Court held that the "substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456. However, as established in the preceding paragraph, the Court is not presented with a claim which seeks to enforce a collective bargaining agreement. Thus, there is no danger that forcing the Teamsters to resort to state court will result in "inconsistent state court interpretations of collective bargaining agreements."

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5. The Sixth Circuit's decision in *WJBK-TV* was virtually unprecedented, as Judge Clay emphasized in his dissent. *WJBK-TV* at 1010, n. 1.

Covenant Coal, 977 F.2d at 897. The "uniformity" argument, in any event, "puts the cart before the horse." *Id.* at 898. "[G]eneralized notions of the benefits of uniform federal interpretation of labor contracts [will not] override the explicit statutory language of section 301 that limits federal jurisdiction to 'suits for violation of [labor] contracts.' " *Id.* Ultimately, the Court's concerns about "national labor policy" must yield to its duty to police its jurisdictional border. *See Victory Carriers, Inc. v. Law*, 404 U.S. 202, 212, *reh'g denied*, 404 U.S. 1064 (1971) ("Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined," quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)).[6, 7]

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6. The Teamsters also argue that the subpoena is an arbitration award that is subject to a three-month limitation period for motions to vacate under Wisconsin law. Therefore, the Teamsters argue that by letting the three-month limitation period run, JHT and Troha have waived all objections to enforcement of the subpoena. This argument fails for numerous reasons, the simplest one being that the defense of lack of subject matter jurisdiction is never waived and can be raised at any point in the proceedings. *See* MOORE'S FEDERAL PRACTICE3D, § 12.30[1]; *see also Floyd v. Thompson*, 227 F.3d 1029, 1035 (7th Cir. 2000).

7. Finally, while the Teamsters attempt to proceed under the Federal Arbitration Act, it is commonly held that the FAA does not provide an independent basis for federal question jurisdiction. *See Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 25. n. 32 (1983).

Appendix B

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT the Teamsters' action to enforce their arbitration subpoena against JHT Holdings and Dennis Troha is **DISMISSED** for lack of subject matter jurisdiction.

Dated at Milwaukee, Wisconsin, this 17th day of July, 2002.

SO ORDERED,

s/ Rudolph Randa
HON. RUDOLPH T. RANDA
U.S. District Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN DATED AND FILED JULY 17, 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CASE NUMBER: 02-C-504

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE and TEAMSTERS LOCAL UNION 745,

Plaintiffs,

V.

DENNIS M. TROHA, JHT HOLDINGS, INC., and ACTIVE TRANSPORTATION, INC.,

Defendants.

JUDGMENT IN A CIVIL CASE

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came on for consideration and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the plaintiffs' action to enforce their arbitration subpoena against Dennis M. Troha and JHT Holdings, Inc. is DISMISSED

Appendix C

for lack of subject matter jurisdiction. This case is hereby DISMISSED.

July 17, 2002
Date

SOFRON B. NEDILSKY
Clerk

s/ [illegible]
(By) Deputy Clerk

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED MAY 28, 2003

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

May 28, 2003

Hon. JOEL M. FLAUM, Chief Judge
Hon. JOHN L. COFFEY, Circuit Judge
Hon. MICHAEL S. KANNE, Circuit Judge

No. 02 C 504

TEAMSTERS NATIONAL AUTOMOTIVE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, a labor organization, and TEAMSTERS LOCAL UNION 745;

Plaintiffs-Appellants.

No. 02-3103 v.

DENNIS M. TROHA, Chairman and CEO of JHT Holdings Incorporated, JHT HOLDINGS, INCORPORATED, a Delaware corporation, and ACTIVE TRANSPORTATION COMPANY, a Kentucky limited liability company,

Defendants-Appellees.

Appendix D

Appeal from the United States District Court for the Eastern District of Wisconsin.

Rudolph T. Randa, *Chief Judge.*

ORDER

On consideration of the petition for rehearing and petition for rehearing en banc filed in the above-entitled case on May 13, 2003, by defendants-appellees, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

Supreme Court, U.S.
FILED
JUL 18 2003
OFFICE OF THE CLERK

No. 02-1860

IN THE

Supreme Court of the United States

DENNIS M. TROHA, JHT HOLDINGS INC. and ACTIVE TRANSPORTATION COMPANY, LLC,
Petitioners,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE and TEAMSTERS LOCAL UNION 745, affiliated with the International Brotherhood of Teamsters, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, under the common law arising under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (2000), a federal court has subject matter jurisdiction over an action to enforce a labor arbitration subpoena issued to a non-signatory witness?

IN THE

Supreme Court of the United States

No. 02-1860

DENNIS M. TROHA, JHT HOLDINGS INC. and ACTIVE TRANSPORTATION COMPANY, LLC,
Petitioners,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE and TEAMSTERS LOCAL UNION 745, affiliated with the International Brotherhood of Teamsters, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The Respondents incorporate by reference the statement of the case set forth in the Court of Appeals' opinion, *Teamsters Automobile Transporters Industry Negotiating Committee v. Troha,* 328 F. 3d 325 (7th Cir. 2003).

REASONS FOR DENYING THE WRIT

In a unanimous decision, the Seventh Circuit Court of Appeals held that under the common law of § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (2000),[1]

[1] The statutory basis for jurisdiction was 28 U.S.C. §1331 (2000).

the district court had subject matter jurisdiction to enforce the labor arbitration subpoena issued to non-signatories JHT Holdings, Inc. and Dennis M. Troha. In recognizing that the Teamsters' complaint raised a federal question, the Court of Appeals simply exercised its authority to create common law to achieve the purposes of § 301. The authority of the federal courts to create common law under § 301 has been acknowledged for nearly half-a-century. There is nothing novel or new in the Court of Appeals' decision that would merit review.

In *Textile Workers Union v. Lincoln Mills*, this Court first recognized that Congress had authorized federal courts to create federal common law under § 301 of the Labor Management Relations Act:

> We conclude that the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws. The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem.[2]

Because Congress both "authorized" and "expects" courts to create a common law under §301, the Court of Appeals was not required to look for a specific congressional intent in order to create a remedy for the Teamsters.[3] Instead, the

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[2] *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456-57 (1957).

[3] *Plucinski v. I.A.M. Nat'l Pension Fund*, 875 F. 2d 1052, 1056 (3rd Cir. 1989) *cited with approval in UIU Severance Pay Trust Fund v. Local Union 18-U, United Steelworkers*, 998 F. 2d 509, 512 n.10 (7th Cir. 1993).

inquiry is whether the judicial creation of a right in this instance is "necessary to fill in interstitially or otherwise fulfill the statutory pattern enacted by Congress." [4] As the Court of Appeals found, the enforcement of labor arbitration subpoenas issued to non-signatories clearly does fulfill the purposes of §301: "A collective bargaining agreement that requires arbitration is powerless if the parties to the arbitration cannot present evidence in the form of third person testimony or documents possessed by third parties." [5]

There is agreement among the Circuit Courts of Appeals on this issue. The only other Circuit Court of Appeals to have addressed this question also held that enforcement of a labor arbitration subpoena issued to a non-signatory is a federal cause of action.[6]

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully Submitted,

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[4] *Id.*

[5] *Troha*, 328 F. 3d at 330.

[6] *Am. Fed'n of TV & Radio Artists v. WJBK-TV*, 164 F.3d 1004 (6th Cir. 1999).